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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:03KD-354

KAUAI

Grant of perpetual, Non-Exclusive Easement to Francis U. Merriman for Access and Utilities Purposes, Waioli, Hanalei, Kauai, Tax Map Key: (4) 5-5-08: 02 and 5-6-02: 01.

APPLICANT:

Francis U. Merriman, unmarried whose mailing address is P.O. Box 1364, Hanalei, Hawaii, 96714.

LEGAL REFERENCE:

Section 171-13 and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waioli situated at Waioli, Hanalei, Kauai, identified by Tax Map Key: (4) 5-5-08: 02 & 5-6-02: 01, as shown on the attached map labeled Exhibit A and B.

AREA:

30,290 square feet, more or less.

ZONING:

TMK: (4) 5-5-08: 02
State Land Use District: agricultural/conservation
County of Kauai CZO: agricultural/open

TMK: (4) 5-6-02: 01
State Land Use District: conservation

County of Kauai CZO: open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by Grant of Non-Exclusive Easement bearing Land Office Deed No. S-28292 to Glenn I. Kobayashi, Christine Y. Kobayashi and Joseph N. Kobayashi for access and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

This parcel of land is identified and Land Commission Award 9136 to Kiniakapo, Land Patent Grant S-8638 has right under Chapter 7-1 and under Kuleana Act Liber 1850, Page 202 of the Revised Law of Hawaii 1925. Therefore, staff is recommending the consideration be gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or expansion or change of use beyond that previously existing"

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department;
- 3) Submit copy of modern metes and bounds dated August 29, 2001 and map dated July 19, 2001 by Peter N. Taylor and approved by the State.

REMARKS:

Mr. Francis U. Merriman is the owner of Land Commission Award 9136 (L C Aw. 9136) to Kiniakapo. L C Aw. 9136 was considered an Unlocated Award. In a letter dated April 11, 2000 to the State Land Survey Office, Mr. Merriman requested confirmation on the location of his unlocated L C Aw. 9136. On September 7, 2001, Mr. Randall M. Hashimoto, the State Land Surveyor approved the modern day metes and bounds description dated April 29, 2001, and map dated July 19, 2001 prepared by Mr. Peter N. Taylor, which placed L C AW. 9136 on TMK: (4) 5-6-02 within Parcel 1 owned by the State of Hawaii.

With the placement of L C Aw. 9136, Mr. Merriman through his Attorney Tom C. Leuteneker requested an easement for access and utility purposes over State own lands identified as Parcel 2 of TMK: (4) 5-5-08 and Parcel 1 of TMK: (4) 5-6-02.

Under HRS Chapter 7 Titled Miscellaneous Rights of the People, Land Commission Award 9136 to Kiniakapo, Land Patent Grant S-8638, has rights of access under Chapter 7-1 and under Kuleana Act Liber 1850, Page 202 of the Revised Laws of Hawaii 1925.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The following Agencies were solicited for comments:

County of Kauai, Planning Department and Public Works: no response.

Department of Water: no comments.

Department of Health: no response.

Office of Conservation and Coastal Land: no comments.

Office of Hawaiian Affairs: copy of submittal sent

Historic Preservation commented as follow:

1. We believe there are no historic properties present because request is for access and it will not affect historic properties.

2. We believe that "no historic properties" will be affected.

Mr. Merriman is requesting a right-of-entry. He is trying to plan for his new house and requires access through the State property. Staff has no objections to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 5-6-02:6, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Francis U. Merriman covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 5-6-02:6, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of a right-of-entry permit to Francis U. Merriman covering the subject area, which are by this reference incorporated herein and further subject to the following:

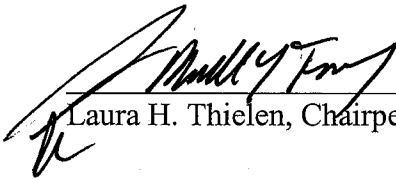
- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Thomas H. Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



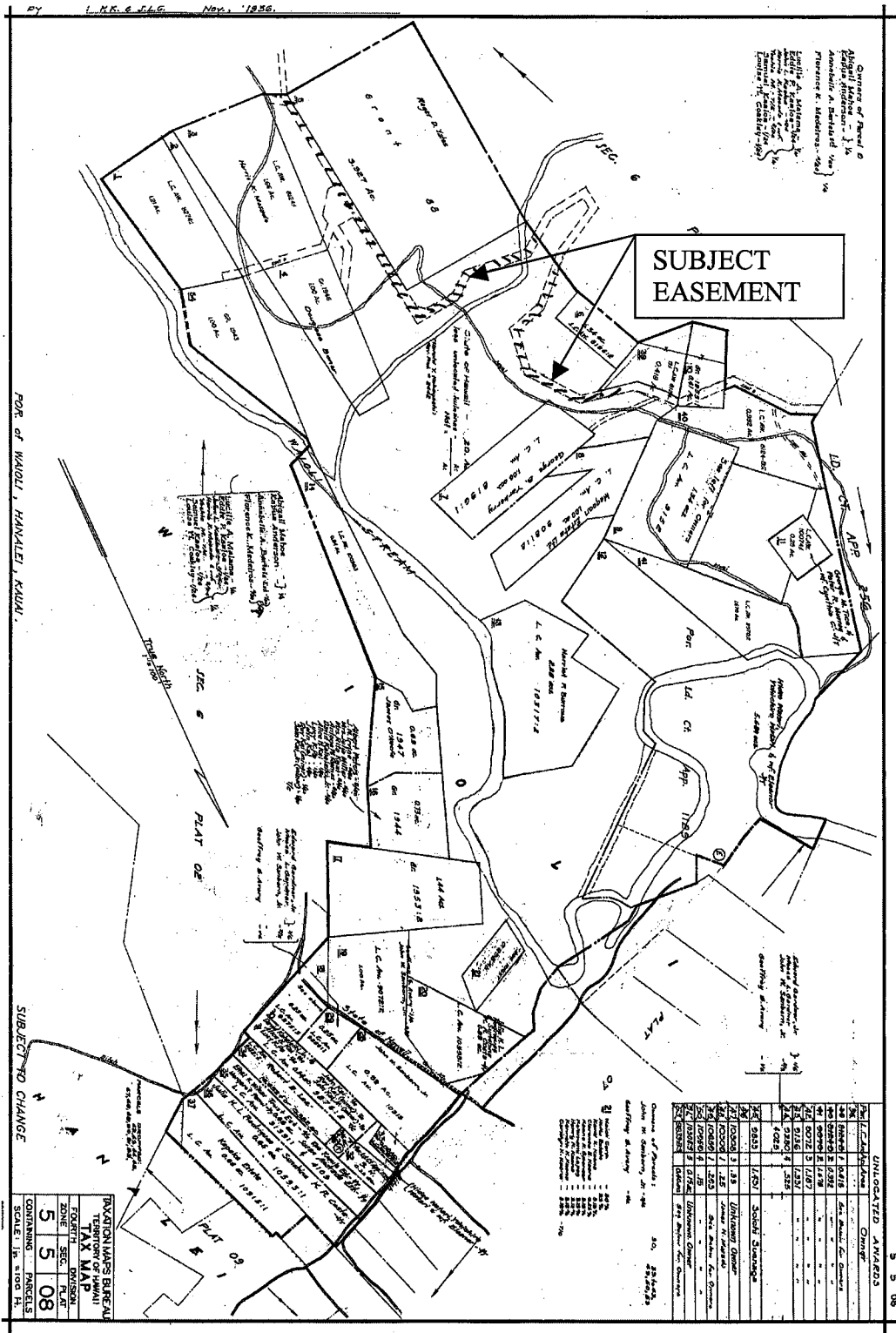


EXHIBIT A

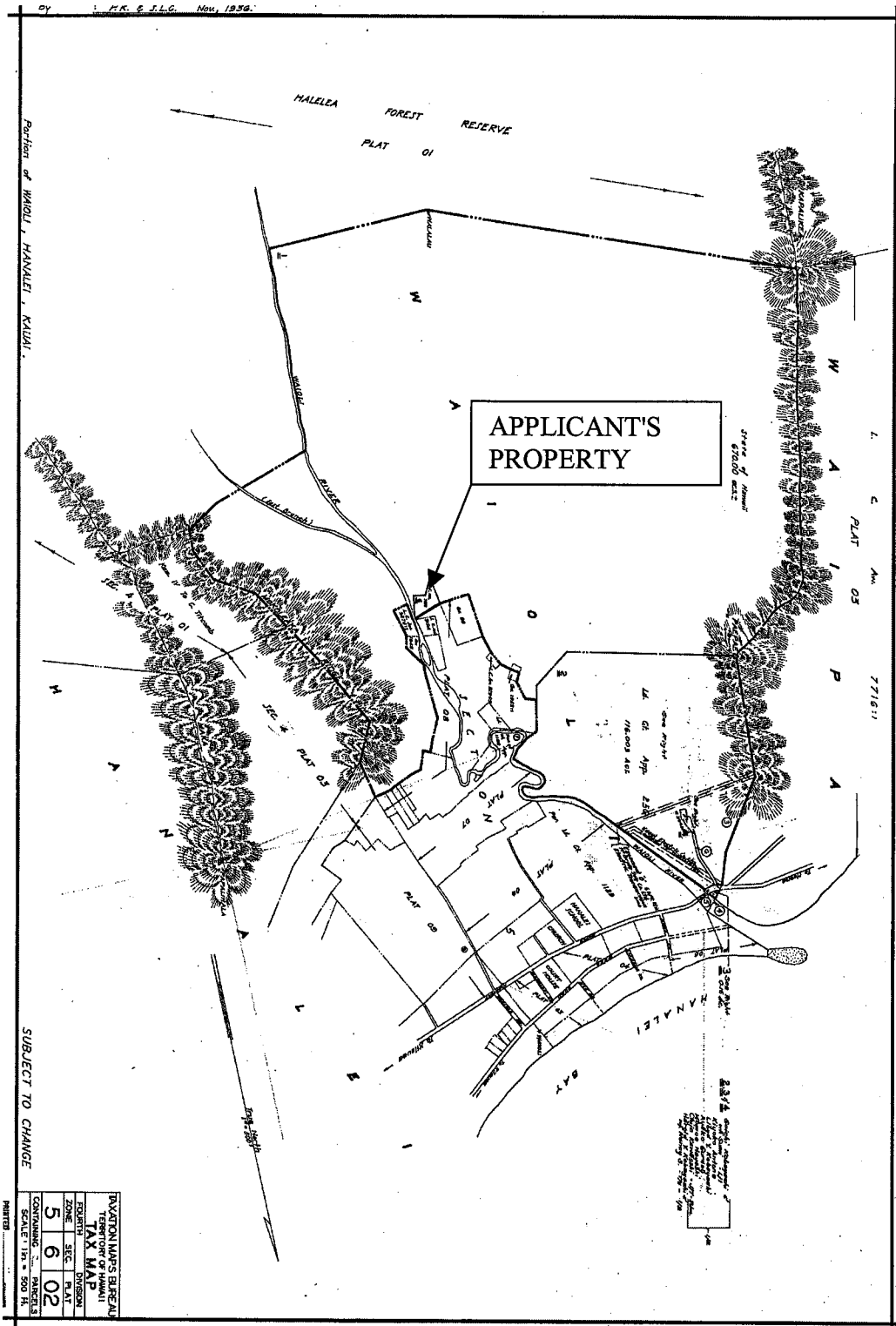


EXHIBIT B